cipal case have been deemed ancillary and such a holding is, it is submitted, correct on principle. *Dewey* v. *West Fairmont Gas Co.*, 123 U. S. 329; *Hatch* v. *Dorr*, 4 McLean (U. S.) 112. See *Campbell* v. *Golden Cycle Mining Co.*, 141 Fed. 610, 613.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ANTICIPATION OF FEDERAL QUESTION. — In a bill for specific performance of a contract made by residents of the same state the plaintiff, after the necessary averments, alleged that the defendant based his refusal to comply with the contract on a certain act of Congress. And he further alleged that such act was either inapplicable or against the Constitution. *Held*, that the federal court is without jurisdiction. *Louisville & Nashville R. R. Co.* v. *Mottley*, 29 Sup. Ct. 42 (U. S. Sup. Ct., Nov., 1908).

The general presumption is that a federal court is without jurisdiction until the contrary affirmatively appears on the record. *Ex parte Smith*, 94 U. S. 455; *Robertson* v. *Cease*, 97 U. S. 646. It is usually sufficient that the facts essential to jurisdiction appear in any part of the record. *Denny* v. *Pironi*, 141 U. S. 121. But when federal jurisdiction is invoked on the ground that the suit is "one arising under the Constitution and laws of the United States," such federal question must be shown by the plaintiff at the outset in his bill or declaration. *California Oil & Gas Co.* v. *Miller*, 96 Fed. 12. See *Houston & Texas Central R. R. Co.* v. *Texas*, 177 U. S. 66. Moreover, the allegations on which jurisdiction is based must be material to the plaintiff's real cause of action. *Joy* v. *City of St. Louis*, 201 U. S. 332. Therefore, if such averments have been inserted merely to make the suit one of federal cognizance, the case will be dismissed. *Robinson* v. *Anderson*, 121 U. S. 522. And it is well settled that in cases both of original jurisdiction and of removal an allegation in the nature of a reply to an expected defense will not confer jurisdiction. *Tennessee* v. *Union & Planters' Bank*, 152 U. S. 454; *Joy* v. *City of St. Louis*, *supra*. This seems correct, as the defendant might not in fact set up such defense. *Florida Central, etc., R. R. Co.* v. *Bell*, 176 U. S. 321. And even if such answer were made, that in itself would not be sufficient to bring the case within federal jurisdiction. *Colorado, etc., Mining Co.* v. *Turck*, 150 U. S. 138. See *Metcalf* v. *Watertown*, 128 U. S. 586.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — SUIT AGAINST "STATE DISPENSARY COMMISSION." — The Legislature of South Carolina created a commission to wind up the affairs of the state liquor business. The complainants, who claimed for liquor sold to the state, sued the commission in the federal court for an accounting, an injunction, and a receivership. *Held*, that the suit is not one against the state within the meaning of the Eleventh Amendment. *Murray* v. *Wilson Distilling Co.*, 164 Fed. 1 (C. C. A., Fourth Circ.). See NOTES, p. 289.

INJUNCTIONS — ACTS RESTRAINED — INTERFERENCE WITH HUNTING RIGHTS. — The defendant, claiming the exclusive right to hunt ducks on an arm of certain navigable waters, persistently prevented the plaintiff from hunting, by rowing among the decoys and frightening the ducks. *Held*, that the plaintiff will be protected by injunction. *Ainsworth* v. *Munoskong Hunting and Fishing Club*, 116 N. W. 992 (Mich.).

The owner of realty has such a right in all game on his property that an injunction will be issued to prevent hunting thereon, even though the entire property is subject to use as a waterway. *Sterling* v. *Jackson*, 69 Mich. 488. And damages will be given against one who intentionally frightens game on another's land. *Ibottson* v. *Peat*, 3 H. & C. 644. The right to capture and subject to ownership game on public lands, or fish in public navigable waters, resides in the people of the sovereignty. *Ne-pee-nauk Club* v. *Wilson*, 96 Wis. 290. Where this right is exercised as a vocation, it will be protected as such, against wrongful acts. However, competition in itself for such game is not unlawful. See *Ibottson* v. *Peat*, *supra*. But an action on the case was allowed for wilfully